

**ORIGINAL**  
ILLINOIS  
COMMERCE COMMISSION

THE ILLINOIS COMMERCE COMMISSION JUN 26 10 37 AM '02

Docket No. 02-0147

CHIEF CLERK'S OFFICE

vs.

### Respondents.

Pursuant to the order of the Administrative Law Judge entered on June 14, 2002,

Pursuant to the order of the Administrative Law Judge entered on June 14, 2002, Complainant NORTH COUNTY COMMUNICATIONS CORPORATION, through its attorney of record, Joseph G. Dicks, timely and respectfully submits this renewed Verified Application for Issuance of Subpoena, concerning the deposition of Dianne M. McKernan

Dianne M. McKernan is an account manager for Verizon Wholesale Markets. Verizon Wholesale Markets is part of Verizon's Network Services Group. Verizon Network Services Group is one of six business groups which make up Verizon Communications, Inc. Thus, it appears that Ms. McKernan's employer is Verizon Communications, Inc., and Verizon Communications, Inc. is a distinct legal entity from the respondents herein, VERIZON NORTH, INC. and VERIZON SOUTH, INC. (See, Exhibit 1.)

According to Verizon's web site,<sup>1</sup> the account management team "is ready to help the CLEC carrier do business with Verizon by understanding their requirements and communicating them to internal groups within Verizon. The account team coordinates the delivery of service and works with the CLEC throughout the delivery process." *Id.* In essence, rather than having CLECs deal directly with the various Verizon ILECs around the county, Verizon has established

<sup>1</sup>. [http://www22.verizon.com/wholesale/handbooks/section/0,,c-1-2-2\\_1,00.html](http://www22.verizon.com/wholesale/handbooks/section/0,,c-1-2-2_1,00.html)

1 a system which *requires* CLECs to deal with one contact person. In this case, that one person is  
2 Dianne McKernan.

3 Ms. McKernan is NORTH COUNTY's account manager. In January of 2001, Ms.  
4 McKernan informed Todd Lesser, NORTH COUNTY's President and CEO, that she would be  
5 the account manager for "all of NORTH COUNTY's needs, coast to coast." (See Exhibit 2.) Mr.  
6 Lesser took Ms McKernan at her word, and interpreted the phrase "coast to coast" to include the  
7 State of Illinois. In fact, on one occasion in June of 2001, when Mr. Lesser had inadvertently  
8 directed an inquiry regarding disconnection to another Verizon employee, Ms. McKernan  
9 quickly put Mr. Lesser in his place: "I guess there was a misunderstanding between us. I thought  
10 I told you back in December that with our reorganization, I would be your account manager for  
11 the entire 'New Verizon.'" (See Exhibit 3.) In sum, Ms. McKernan acts as the respondents' sole  
12 authorized representative for the interconnection process.

13 The central allegation in this matter is clear at this point to all parties: the propriety of  
14 Verizon's refusal to interconnect with CLECs at "shared" or "retail" facilities and its "policy" of  
15 requiring that CLECs interconnect at "dedicated" or "wholesale" facilities, requiring new fiber  
16 construction and substantial delays before CLECs can service their customers. This was the way  
17 it was in West Virginia. This was the way it was in New York. Based upon this real life  
18 experience, when NORTH COUNTY sought to interconnect in Illinois, Mr. Lesser inquired as  
19 to whether a fiber build would be required. This answer followed from Ms. McKernan:

20 It took a bit of investigating to get to the Verizon West policy at  
21 terminating interconnection trunks on Enterprise Facilities.

22 Unfortunately, the West policy is the same as the East. **We will not**  
23 **terminate interconnection trunks on a retail/enterprise facility.**

24 (See Exhibit 4.)

25 Clear. Straightforward.

26 Fed up with this corporate policy and the general foot-dragging that has become  
27 synonymous with the Verizon name, NORTH COUNTY instituted this administrative  
28 proceeding under the Illinois Public Utilities Act on February 15, 2002. Astonishingly, a review

1 of the respondents' discovery responses reveals that the filing of this action appears to have  
2 brought about the immediate end of the Verizon policy. . . at least on paper. . . and at least in  
3 Illinois.

4 NORTH COUNTY sent out discovery requests. Respondents managed to find fault with  
5 just about everything. A successful motion to compel followed, requiring further responses.  
6 Further responses followed, which continued to contain objections, surplusage, and the spin  
7 respondents' counsel chose to place on the requests. The following responses bear note, copies  
8 of which are attached as Exhibit 5.

9 Interrogatory No. 2: When asked what was meant by a "retail enterprise facility,"  
10 Verizon initially had no difficulty referencing a pre-existing multiplexer installed to service end-  
11 user subscribers. It subsequently amended its response to claim this was not a "common or  
12 standard" Verizon term, but then changed its answer to refer to a retail service, such as a DS1  
13 PRI, or a business dial-tone line.

14 Interrogatory No. 10: Verizon **denies** its policy is to refuse to interconnect with CLECs  
15 at retail enterprise facilities.

16 Interrogatory No. 28: When asked if it has interconnected with a CLEC at a retail facility  
17 in the past six months, Verizon again objects to the term "retail facility," claims it is not a  
18 "common or standard" term used by Verizon, and finally "answers" by indicating that  
19 interconnection "occurs" at retail facilities and that the majority of carriers "locate" their  
20 equipment at retail facilities. Really not a straightforward answer to a simple question.

21 Interrogatory No. 29: When asked if a fiber build were required within the past 12  
22 months when a CLEC had requested 3 or fewer T-1s, as expected, Verizon objected to the term  
23 "fiber build-out" and then stated it could not identify any locations with 3 or fewer T-1s where  
24 "new fiber optic facilities" were constructed. Notably, Verizon found the term "fiber build-out"  
25 to be vague, but it appeared to understand what "new fiber optic facilities were constructed"  
26 meant.

27 Document Request No. 3: No records exist as to any facilities with sufficient capacity to  
28 install 3 or more T-1s in DeKalb as of November 1, 2001.

1        Document Request No. 4: No documents exist concerning the dichotomy between retail  
2 and wholesale facilities.

3        Document Request No. 5: No documents exist evidencing any fiber builds in the past 12  
4 months.

5        Then why the policy? Or is there really one? Perhaps Verizon has simply answered as  
6 best as it is capable. Perhaps it is time to get the straight answer from the person with the  
7 answers: Dianne M. McKernan. Perhaps it is time to get the truth.

8  
9        **THE COMMISSION'S RULES OF PRACTICE SUPPORT THE DEPOSITION**

10        Depositions are implicated in three of the Commission's Rules of Practice: sections  
11 200.340, 200.360, and 200.380.

12        Section 200.340 addresses the Commission's policy on discovery. While it is the  
13 Commission's policy to deny requests for depositions *whose primary effect is harassment,*  
14 *delay, or disruption of the proceedings,* and depositions are *discouraged* **unless** formal  
15 procedures have proved to be unsuccessful, it is also the Commission's policy to obtain **full**  
16 **disclosure** of **all** relevant and material facts. The Commission's search for the truth compels the  
17 deposition in this instance. The inconsistencies between Ms. McKernan's pre-filing position to  
18 NORTH COUNTY and the respondent's formal post-filing positions prepared by counsel  
19 are evident and need to be examined in detail. To claim a lack of documentation on the  
20 dichotomy between retail and wholesale facilities, to play games with the use of the terms  
21 "wholesale" and "retail" facilities (Request No. 4, above), to deny the existence of a policy set  
22 out in writing to a customer (Interrogatory no. 10, above), and to feign ignorance of the term  
23 "retail enterprise facility" (Request No. 5 above and Interrogatory Nos. 2, 13 and 28) when that  
24 very term appears in a "Verizon" e-mail from Ms. McKernan, (Exhibit 4) compels the  
25 conclusion that Ms. McKernan will need to be deposed.

26        The policy *discouraging* depositions, far from a blanket prohibition on such discovery,  
27 has no place, where, as here, formal procedures have proved to be unsuccessful. Nor is there any  
28 indication whatsoever that NORTH COUNTY seeks this deposition for any improper purpose.

1 Indeed, it is curious that respondents do not want McKernan's version of events to be made  
2 known at this time, so that the parties may be fully prepared to present testimony to assist the  
3 Commission in its decision. The answer lies in the fact that without Ms. McKernan's deposition,  
4 Respondents can continue to deny, without being held accountable, their misdeeds.

5 Section 200.360 ( c ) provides that, "In addition to depositions," other discovery devices  
6 may be employed. Depositions, then, clearly have their place before the Commission.  
7 Subsection (a) explains that the Commission, any Commissioner, Hearing Examiner, or any  
8 party may cause the deposition of witnesses to be taken. Again, depositions' place before this  
9 tribunal is secure. In addition, subsection (a) provides that, "Except under special circumstances  
10 and for good cause shown, no deposition may be taken except upon 14 days notice to all parties  
11 and staff witnesses." It is important to note that the requirements of "special circumstances"  
12 and "good cause" only come into play when one seeks an order shortening time from the  
13 standard 14-day notice requirement. The ordinary application process does not place the burden  
14 of demonstrating these requirements on the moving party.

15 What the moving party *is* required to show appears in section 200.380 ( c ). In addition  
16 to certain procedural requirements, the applicant is only required to show that the subpoena  
17 requested is **"reasonably required to obtain information that cannot be obtained through**  
18 **requests for information or other discovery."** The standard is one of **reasonableness**. While  
19 the respondents are the beneficiaries of Ms. McKernan's espousal of corporate policy, and  
20 without doubt she acted as their representative during the times in question, *she is not an*  
21 *employee of the respondents*. She is, effectively, a shield behind which respondents can credibly  
22 hide and declare ". . . we do not know what you are talking about; we have no such policy."  
23 Well, somebody does, and NORTH COUNTY has been its victim. Indeed, the respondents have  
24 already attempted to "cut her loose" during these proceedings. Interrogatories, requests for  
25 admissions, data requests, and any other discovery device cannot be directed to her attention.  
26 She provides the respondents with deniability, an important consideration, because as her  
27 beneficiaries, they are the ones who must ultimately be compelled to interconnect and to cut ties  
28 with Verizon's corporate policy. The only means of getting her story so that the parties can be

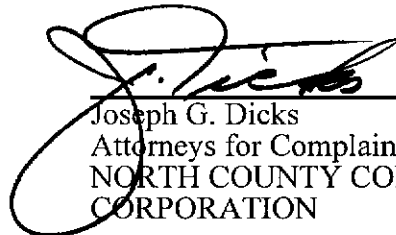
1 prepared to try this matter is through her deposition.

2 NORTH COUNTY filed this case because of its contacts, present and past, with Dianne  
3 McKernan. The Commission's policy "discouraging" depositions has no application in this  
4 setting.

5 **CONCLUSION**

6 NORTH COUNTY respectfully submits that the standards governing the issuance of  
7 deposition subpoenas have been satisfied, as set forth above, and respectfully prays that this  
8 Commission order the deposition of Ms. McKernan at her place of business, Verizon Wholesale  
9 Markets, 1 Washington Park, Newark, NJ 07102, on August 20, 2002, 11:00 A.M. or at a date  
10 and time convenient to the Commission, the parties and the witness. Ms. McKernan's telephone  
11 number is (973) 649-8250. Further, it is requested that the deponent bring with her any and all  
12 documents which refer, relate to or otherwise evidence the existence of Verizon's policy, as  
13 referred to in Ms. McKernan's e-mail, attached hereto as Exhibit 4, regarding interconnection at  
14 retail/enterprise facilities.

15 Respectfully submitted,

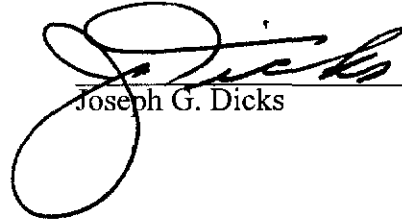
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17   
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**CERTIFICATE OF SERVICE**

I, Joseph G. Dicks, hereby certify that I served a copy of the **RENEWED VERIFIED APPLICATION FOR ISSUANCE OF SUBPOENA** regarding Docket No. 02-0147 upon counsel for Verizon North, Inc. and Verizon South, Inc.; Illinois Commerce Commission by Chief Clerk Donna M. Caton via UPS; and William Showtis, Administrative Law Judge on June 25, 2002 via email to the parties on the service list.

  
\_\_\_\_\_  
Joseph G. Dicks

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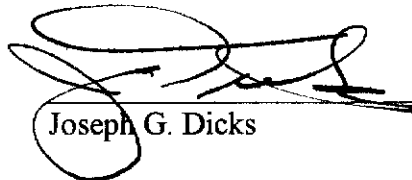
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STATE OF CALIFORNIA       )  
  )  
COUNTY OF SAN DIEGO     )       SS.

**VERIFICATION OF JOSEPH G. DICKS**

I, Joseph G. Dicks, being first duly sworn and on oath state that I am the attorney of record for North County Communications, Inc. and as such, am competent to testify on the facts alleged in the NORTH COUNTY COMMUNICATIONS CORPORATION'S RENEWED VERIFIED APPLICATION FOR ISSUANCE OF A SUBPOENA TO TAKE THE DEPOSITION OF DIANNE MCKERNAN, that I have read the foregoing NORTH COUNTY COMMUNICATIONS CORPORATION'S RENEWED VERIFIED APPLICATION FOR ISSUANCE OF A SUBPOENA TO TAKE THE DEPOSITION OF DIANNE MCKERNAN, and that the factual allegations contained therein are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Joseph G. Dicks

Subscribed and sworn to me this  
\_\_\_\_ day of June 24, 2002.

  
\_\_\_\_\_  
Notary Public

